

FIRE SAFETY: ENQUIRIES ON THE SALE OR LEASE OF COMMERCIAL PREMISES

It may come as a surprise to you that on the sale or lease of a commercial property various questions are raised regarding fire safety. Usually purchasers' and tenants' Solicitors raise standard commercial property enquiries. These standard enquiries include the following in respect of fire safety:-

- 1.1 Please advise us where we may inspect any records in relation to the Property, made for the purposes of complying with the Fire Safety Order 2005, including any records of findings following a fire risk assessment of the Property.
- 1.2 Please advise us where we may inspect any records in relation to any premises within any building of which the Property comprises part, made for the purposes of complying with the Fire Safety Order 2005, including any records of findings following a fire risk assessment of any such premises.
- 1.3 Please provide details of any steps taken in relation to the Property to co-operate with any other people and to co-ordinate measures to comply with the Fire Safety Order 2005.
- 1.4 What are the current means of escape from the Property in case of emergency?

Some of you may not be aware that the previous regime of Fire Certificates has now been repealed.

Under the Fire Safety Order 2005 which came into force on the 1st October 2006 the new system in respect of Fire Safety for commercial premises is based on a risk assessment. It abolished the requirements for commercial premises to have Fire Certificates.

The Order introduced the need for the "responsible person" being an employer, building owner or occupier to carry out and implement and maintain a fire safety risk assessment. This legislation applies to all non-domestic premises including common parts, for example, stairwells and corridors, of a block of flats.

At a work place the responsible person is likely to be the employer to the extent that the workplace is under their control. However, a landlord is likely to be the responsible person in relation to common parts of either a residential or commercial block. It may be that in some circumstances there is more than one responsible person which will require landlords, tenants and Management Agents to cooperate in order to identify and comply with their duties.

Under the new regime the responsible person is under a duty to undertake a risk assessment to identify the risks and hazards, consider who may be at risk, eliminate or reduce the risk of fire as far as is reasonable practicable and provide general fire precautions to deal with any residual risk, take additional methods to ensure fire safety where flammable or explosive materials are used or stored and to create a plan to deal with any emergencies and in most cases to document the findings and review the findings as necessary.

It is important to remember that fire risk assessments are a continuing obligation and it must be an ongoing process whereby the document is continually updated and readdressed and in particular when any changes are made to the building or to the occupier or user.

The enforcing authority in respect of the Order is the Local Fire Authority. Fire Officers have the authority to enter and inspect premises and to enquire who is the responsible person and require the production of the risk assessment. If the enforcing authority is not happy they have the power to issue notices setting out what action is required. Penalties for not complying with the legislation range from a fine of up to £5,000.00 in the Magistrates Court to an unlimited fine and up to two years imprisonment if the case is heard in the Crown Court.

You will see from the extract of the enquiries that when you come to sell or lease your commercial premises a potential buyer or tenant will want to inspect your records to ensure compliance with the Fire Safety Order 2005.

If you require advice on any aspects of commercial property including sales, purchases and leases please contact Ruth Latham.

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